

REMARKS/ARGUMENTS

This amendment is submitted in response to the Office Action received from the United States Patent Office with a mailing date of August 16, 2006. In the Office Action, the Patent Examiner objected to Claims 30, 36, 37 and 42 because of informalities. Additionally, the Patent Office rejected Claim 37 under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Additionally, the Patent Office rejected Claims 30-39 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Further, the Patent Office rejected Claims 30, 32, 33 and 35-38 under 35 U.S.C. §102(e) as being anticipated by *Grams et al.* (United States Patent Number: 6,371,717). Still further, the Patent Office rejected Claims 30, 31, 35, 36 and 38-40 under 35 U.S.C. §102(b) as being anticipated by *Tonjes* (United States Patent Number: 5,244,330). Finally, the Patent Office rejected Claims 32, 33 and 41-43 under 35 U.S.C. §103(a) as being unpatentable over *Tonjes* (United States Patent Number: 5,244,330) in view of *Grams et al.*

The Applicant notes with appreciation that the Patent Office has noted that Claim 34 is allowable if rewritten to overcome the rejection under 35 U.S.C. §112, second paragraph, set forth the Office Action, and to include all of the limitations of the base claim and any intervening claims. In response applicant has amended Claim 30 to include the limitations of Claim 34 and has cancelled Claim 34.

By the present amendment, Applicant submits that this response overcomes the objections and rejections to the claims by the Patent Office. In response to the objections to Claims 30, 36, 37 and 42, Applicant has amended Claims 30, 36 and 37 to overcome the objections. Applicant submits that the amendment to the claim overcomes the objections claims by the Patent Office. Notice to that effect is requested

The Patent Office rejected Claims 37 under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. The Claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The Patent Examiner states that the applicant states in the lines 3-6 of the 15th paragraph of the specification: "A second series of drives 226 each coupled to claws 228 is mounted on frame 204 each adjacent

to claw 224. Both series of claws 228 and 224 form two rows within game 204. A shoulder pad 230 comprising two semi-circles surrounds each claw 228. Should pad 230 is mounted on frame 204 with a support 232. Should pads 230 are positioned to receive the shoulder of a conventional large water bottle. Should pads 230 also provide support to filled bottles.”

Applicant has cancelled Claim 37. The rejection is moot in view of the cancelled claim. Applicant respectfully requests that the rejection be withdrawn. Notice to that effect is requested.

The Patent Office rejected Claims 30-39 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, the Patent Office states that the phrase “first and second gripping heads capable of gripping the neck of front and rear containers” is vague and indefinite. Additionally, the Patent Office states that the “singular neck” of the front and rear containers are not shown in the figures. Further, the Patent Office states that the phrase “contacting a shoulder portion of the front and rear containers” is unclear because none of the provided figures illustrate this contact. Applicant has amended Claim 30 to more particularly point out and distinctly claim the subject matter. More specifically, applicant has amended to properly describe the first container and its spatial relation to the second container. However, applicant respectfully submits that Figure 3 clearly indicates the “singular neck” the contact with the singular neck and the spatial configuration of the first container in relation to the second rearwardly positioned second container. Applicant respectfully requests that the Patent Office withdraw the rejection and allow the claims to proceed to allowance. Notice to that effect is requested.

Additionally, the Patent Office rejected Claims 30, 32, 33 and 35-38 under 35 U.S.C. §102(e) as being anticipated by *Grams et al.* The Patent Office states that *Grams et al.* discloses a device for unloading a rack storing containers wherein; the rack has a front space storing a front container and a rear space storing a rear container, comprising a robotic arm coupled to a frame having a first and second gripping heads, the second head having a shoulder support structure to support the containers.

Grams et al. requires a device for mechanically gripping, transporting, loading and unloading cylindrical containers of various sizes for attachment to a robotic arm. The containers may be bottles including drinking water bottles. The device includes a plurality of gripping mechanisms for gripping the containers. Support pins are also provided for supporting the

rotational motion of full bottles. A system for efficiently removing empty containers from racks and simultaneously loading full containers is also disclosed.

Amended Claim 30 requires a device for unloading a rack storing containers. The device having a rack having a front space storing a first front container and a rear space storing a second rearwardly positioned container. Additionally, the device comprises a robotic arm coupled to a frame having first and second gripping heads capable of gripping the neck of first front position container and the second rearwardly positioned container. Moreover, the device requires the first gripping head is capable of displacement from a proximal position to a distal position to reach through the front space into the rear space for gripping the rear container and further wherein the second gripping head remains stationary in spatial relation to the frame, during all phases of operation and a shoulder support structure coupled to the second gripping head for contacting a shoulder portion of the first front positioned and second rearwardly positioned containers to support a weight of the containers while the container is being gripped by the second gripping head.

However, *Grams et al.* does not teach or suggest a device having a second gripping head that remains stationary in spatial relation to the frame as required by Amended Claim 30.

Under 35 U.S.C. §102(b), anticipation requires that a single reference disclose each and every element of Applicant's claimed invention. *Akzo N.V. v. U.S. International Trade Commission*, 808 F.2d 1471, 1479, 1 USPQ 2d 1241, 1245 (Fed. Cir. 1986).

Moreover, anticipation is not shown even if the differences between the claims and the reference are "insubstantial" and one skilled in the art could supply the missing elements. *Structure Rubber Products Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 USPQ 1264, 1270 (Fed. Cir. 1984).

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (MPEP § 2131).

In view of the foregoing remarks and amendments, the rejection of Claims 30, 32, 33 and 35-38 under 35 U.S.C. §102(e) as being anticipated by *Grams et al.* has been overcome and should be withdrawn. Notice to that effect is requested.

As to the rejection of Claims 30, 31, 35, 36 and 38-40 under 35 U.S.C. §102(b) as being anticipated by *Tonjes*, Applicant respectfully asserts that the claim is further believed allowable over *Tonjes* for the same reasons set forth below.

Tonjes teaches a bottle loader and method for loading bottles onto shelves on a rack. The bottle loader has a carrier car rotatably supported on a frame. The bottles are placed in a vertical position and urged onto the carrier car. The bottles are then rotated on the carrier car from the vertical position to a horizontal position while horizontally aligning the bottles with the shelf on the rack. Once the bottles are aligned, they are urged off of the carrier car and onto the rack.

Again, Amended Claim 30 requires a device for unloading a rack storing containers. The device having a rack having a front space storing a first front container and a rear space storing a second rearwardly positioned container. Additionally, the device comprises a robotic arm coupled to a frame having first and second gripping heads capable of gripping the neck of first front position container and the second rearwardly positioned container. Moreover, the device requires the first gripping head is capable of displacement from a proximal position to a distal position to reach through the front space into the rear space for gripping the rear container and further wherein the second gripping head remains stationary in spatial relation to the frame, during all phases of operation and a shoulder support structure coupled to the second gripping head for contacting a shoulder portion of the first front positioned and second rearwardly positioned containers to support a weight of the containers while the container is being gripped by the second gripping head.

However, *Tonjes* does not teach or suggest a device having a second gripping head that remains stationary in spatial relation to the frame as required by Amended Claim 30. Further, *Tonjes* does not teach or suggest a second gripping head with claws and further wherein the second gripping head remains stationary in spatial relation to the frame, during all phases of operation as required by Claim 40.

Under 35 U.S.C. §102(b), anticipation requires that a single reference disclose each and every element of Applicant's claimed invention. *Akzo N.V. v. U.S. International Trade Commission*, 808 F.2d 1471, 1479, 1 USPQ 2d 1241, 1245 (Fed. Cir. 1986).

Moreover, anticipation is not shown even if the differences between the claims and the reference are "insubstantial" and one skilled in the art could supply the missing elements.

Structure Rubber Products Co. v. Park Rubber Co., 749 F.2d 707, 716, 223 USPQ 1264, 1270 (Fed. Cir. 1984).

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (MPEP § 2131).

In view of the foregoing remarks and amendments, the rejection of Claims 30, 31, 35, 36 and 38-40 under 35 U.S.C. §102(b) as being anticipated by *Tonjes* has been overcome and should be withdrawn. Notice to that effect is requested.

As to the rejection of Claims 32, 33 and 41-41 under 35 U.S.C. §103(a) as being unpatentable over *Tonjes* in view of *Grams et al.*, Applicant respectfully asserts that the claim is further believed allowable over *Tonjes* and *Grams et al.* for the same reasons set forth with respect to independent Claims 30 and 40, since the claim sets forth additional novel elements of Applicant’s Bottle Loading and Unloading tool with extendable Arms. Moreover, Applicant respectfully asserts that the amendment to Claims 30 and 40 further distinguish the present invention from the prior art references.

It is submitted that the question under §103 is whether the totality of the art would collectively suggest the claimed invention to one of ordinary skill in this art. *In re Simon*, 461 F.2d 1387, 174 USPQ 114 (CCPA 1972).

That elements, even distinguishing elements, are disclosed in the art is alone insufficient. It is common to find elements somewhere in the art. Moreover, most if not all elements perform their ordained and expected functions. The test is whether the invention as a whole, in light of the teaching of the reference, would have been obvious to one of ordinary skill in the art at the time the invention was made. *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983).

It is insufficient that the art disclosed components of Applicants’ invention. A teaching, suggestion, or incentive must exist to make the combination made by Applicants. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1988).

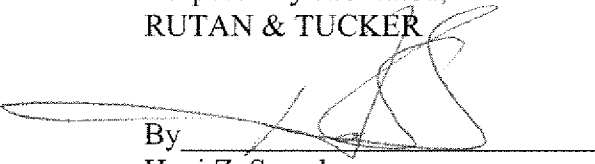
In view of the foregoing remarks and amendments, the rejection of Claims 32, 33 and 41-43 under 35 U.S.C. §103(a) as being unpatentable over *Tonjes* in view of *Grams et al.* has been overcome and should be withdrawn. Notice to that effect is requested.

Claims 31-39 depend from Claim 30; and Claims 41-43 depend from Claim 40. These claims are further believed allowable for the same reasons set forth with respect to independent Claims 30 and 40 since each sets forth additional novel components and steps of Applicant's Bottle Loading and unloading Tool with Extendable Arms.

Request For Allowance

In view of the foregoing remarks, Applicant respectfully submits that all of the claims in the application are in allowable form and that the application is now in condition for allowance. If any outstanding issues remain, Applicant urges the Patent Office to telephone Applicant's attorney so that the same may be resolved and the application expedited to issue. Applicant requests the Patent Office to indicate all claims as allowable and to pass the application to issue.

Respectfully submitted,
RUTAN & TUCKER



By _____
Hani Z. Sayed,
Attorney for Applicant
Registration No. 52,544

Rutan & Tucker
611 Anton Blvd., 14th Floor
Costa Mesa, CA 92626-1931
Telephone (714) 641-5100
Fax (714) 546-9035